

REMARKS

The office action mailed from the United States Patent and Trademark Office December 30, 2005, the Examiner rejected claims 1-17, because the claimed invention is directed to non-statutory subject matter, and rejected claims 9-11 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Accordingly, Applicant respectfully provides the following.

Claims Rejections Under 35 U.S.C. § 101

The United States Patent and Trademark Office and the United States Court of Appeal for the Federal Circuit treat the utility requirement 35 U.S.C. § 101 as a relative low bar to patentability. For example, the MPEP advises Examiners to impose a rejection based on lack of utility only if the claimed invention is “not useful for any particular purpose.” MPEP § 2107. The MPEP requires only “one single credible assertion of specific and substantial utility for each claimed invention to satisfy utility requirement.” *Id.* The Federal Circuit has routinely upheld claims as sufficient under Section 101. For example, in In Re Alappat and State Street Bank & Trust Co. v. Signature Fin. Group, Inc., 149 F.3rd 1368 (Fed. Cir. 1998), the court upheld claims for machines that had achieved certain results. In In Re Alappat, the machines used mathematic algorhythms to transform data into smooth wave forms. In State Street, the machine used mathematical calculations to transform data into final share price. In addition, in Arrhythmia Research Technology Inc. v. Coraxonix Corp., the court upheld that the transformation of electrocardiograph signals from a patients heart heat through a series of mathematical

calculations is useful because it gave information about a patients heart. 958 F.2d 1053 (Fed. Cir. 1992).

Similar to Arrhythmia, the present invention presents useful information assessing the success of professional development training and uses computer and Internet based technology to produce useful information assessing the success of professional development training. The present invention is not a mental step that could be performed in any learning institution by person with a pencil and paper. Rather, as indicated in the claims of the invention, the use of computers at least as access to the Internet are required to provide a web based teaching tool. Further, Applicant respectfully suggests that providing training that teaches skill wherein said training comprises receiving training over the internet is equivalent to providing a final share price in State Street.

The Examiner has indicated that in Arrhythmia and State Street the claims were directed to the device capable of performing certain functions. Likewise, the present invention is directed towards the utilization of the device, namely a computer system for accessing the Internet to produce useful and concrete data. Additionally, the claims of the present invention recite a limitation for allowing access over the internet to a lesson planned development matrix for said training. These activities occur through a computer and produce concrete and tangible results, namely a planned development matrix for training users.

The process of utilizing technology and computer based systems is find substantial report in the application as filed. Page 2 of the specification indicates that “this invention relates to a web-enabled system for teaching skills to participants,” and further refers to in the same

paragraph to a system which “may operate by initially, providing the matrix to automatically conform to standards set by the State or regional districts where the instructor teaches.” Accordingly, in a non-limiting example of the invention, the invention comprises the capacity to utilize computers systems to access the internet and automatically provide a teaching matrix.

Page 5 of the specification provides support for the utilization of a concrete and tangible result produced by device or machine. Page 5 indicates in a non-limiting example that “these professionals are trained by accessing, via internet, audio or video presentations on topics of interest.”

Page 10, likewise provides a non-limiting example of a device or machine providing a useful concrete tangible result, “the instructor may then access on-line lesson planned development matrix...” In a non-limiting example, Page 11 provides further support for this invention having useful concrete and tangible utilities and indicates that “instructors or trainees may be trained on-line through video/DVD capabilities of the present invention.”

Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 9-11 are rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the enablement requirement specifically, the Examiner has indicated that the specification fails to recite support for “electronically assessing a user’s knowledge.” As indicated above, the specification is replete with examples of users utilizing electronic devices, namely computers to access the internet, DVD machines and/or other instructional media playing materials. Accordingly, the specification provides adequate support for utilization of electronic devices which may be utilized to assess the user’s knowledge of the information.

CONCLUSION

Applicant respectfully submits that because the systems of the present invention produce concrete and tangible results utilizing computer systems and access to the internet claims 1-17 recite statutory subject matter. Applicant submits the claims are now in condition for allowance and respectfully requests the same. If any impediments to this application remain after consideration of the foregoing remarks, the Examiners is invited to initiate a telephone conference with the undersigned attorney of record.

DATED this 30 day of March, 2006.

Respectfully submitted,

Michael F. Krieger
Attorney for Applicant
Registration No. 35,232

KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111
Telephone (801)328-4814
Facsimile (801)321-4893

JRM/sp
Doc#887244